IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.BALAKRISHNAN NAIR

MONDAY, THE 13TH AUGUST 2007 / 22ND SRAVANA 1929

WP(C).No. 19628 of 2007(R)

PETITIONERS:

1. **M.VALSAKUMARI, OFFICE SUPERINTENDENT, HIGH COURT OF KERALA, RESIDING AT KANNAT HOUSE, KORATTY SOUTH, THRISSUR DISTRICT.**
2. **M.SUJATHA, SR.GRADE TYPIST, HIGH COURT OF KERALA, RESIDING AT KARTHIKA, VIKASAVANI, THENGODU P.O., KOCHI-682 030.**
3. **V.KANAKALATHA, COURT OFFICER, HIGH COURT OF KERALA RESIDING AT VRINDAVAN, NETTOOR P.O., KOCHI.**
4. **P.K.REMANI, SEL.GRADE TYPIST, HIGH COURT OF KERALA, RESIDING AT ATHIRA, TAGORE LANE, PERANDOOR ROAD, ELAMAKKARA, KOCHI.**

BY ADV. SRI.P.SREEKUMAR.

RESPONDENTS:

1. **STATE OF KERALA REPRESENTED BY CHIEF SECRETARY, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
2. **THE PRINCIPAL SECRETARY TO GOVERNMENT, HOME(C) DEPARTMENT, GOVERNMENT SECRETARIAT, THIRUVANANTHAPURAM.**
3. **THE HON'BLE CHIEF JUSTICE, HIGH COURT OF KERALA, ERNAKULAM.**

W.P.(C). NO.19628/2007:

4. THE REGISTRAR GENERAL,
HIGH COURT OF KERALA, KOCHI-18.

5. THE ACCOUNTANT GENERAL (A&E),
THIRUVANANTHAPURAM.

6. THE SUB TREASURY OFFICER,
ERNAKULAM.

BY ADV. SRI.K.R.B.KAIMAL (SR.),
GOVT. PLEADER SRI. P. NANDAKUMAR.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/07/2007, ALONG WITH W.P.(C). NO. 20158/2007 AND CONNECTED CASES, THE COURT ON 13/08/2007 DELIVERED THE FOLLOWING:

W.P.(C). NO.19628/2007:

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P.1: COPY OF THE RELEVANT PORTION OF THE KERALA HIGH COURT SERVICE RULES 2007.

EXT.P.2: COPY OF THE COMMUNICATION DTD. 17/01/2007 ADDRESSED FROM THE R.4. ADDRESSED TO THE R.2.

EXT.P.3: COPY OF THE PAY BILL FOR THE P.1. ALONG WITH THE CERTIFICATE AND THE ENDORSEMENT OF THE R6.

EXT.P.4: COPY OF THE COMMUNICATION DTD. 07/06/2007 ISSUED BY THE R.4. TO THE R.5.

EXT.P.5: COPY OF THE COMMUNICATION DTD. NIL ADDRESSED TO THE R.4.

EXT.P.6: COPY OF THE LETTER DTD. 22/05/2007 ISSUED BY THE R.4.

EXT.P.7: COPY OF THE COMMUNICATION DTD. 12/06/2007 ISSUED BY THE R.1.

RESPONDENT'S EXHIBIT:

EXT.R4.A: COPY OF THE D.O. LETTER NO. A1 702/98 DTD. 22/06/2007 OF THE R.4. TO THE GOVERNMENT.

//TRUE COPY//

prv.

K.BALAKRISHNAN NAIR, J.

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WPC NOS.19628, 20158, 20191, 20856 & 21291 OF 2007

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Judgment

The common question, which arises for decision in these Writ Petitions is whether a Rule made by Hon. the Chief Justice of Kerala, enhancing the retirement age of the employees of the High Court is valid or not, in the absence of approval of the Governor. Therefore, they are heard together and disposed of by this common Judgment.

Writ Petition (C) No.19628 of 2007

2. The petitioners in this Writ Petition are employees of the High Court. They attained the age of 55 years, on various dates after 01.01.2007. The retirement age under the Kerala High Court Service Rules, 1970, which was in force upto 31.12.2006, was 55 years. But, as per Rule 37(1) of the Kerala High Court Service Rules, 2007, the age of retirement of the employees is 58 years with effect from 01.01.2007. Therefore, they are allowed to continue in service. But, when their salary bills were presented, they were not honoured by the Treasury Officer. The Government refused to issue instructions to the Accountant General and the Treasury Officer for honouring the bills and therefore, the petitioners are not able to draw their salary. So, they were constrained to approach this Court.

3. Ext.P1 is the relevant portion of the Kerala High Court Service Rules, which came into force with effect from 01.01.2007. By Ext.P2, the Registrar of the High Court, on 17.01.2007, forwarded a copy of the said Rules to the Government, for its information and also for issuing necessary orders to the Accountant General to act according to the new Rules. But, when Ext.P3 salary bill of the 1st petitioner was presented, the Sub Treasury Officer returned the same by recording an objection that she retired from service as on 31.05.2007. Thereupon the Registrar of the High Court addressed Ext.P4 communication dated 07.06.2007 to the Accountant General of Kerala, pointing out that the age of superannuation of the members of the High Court Service has been enhanced to 58 and therefore, the first petitioner will retire only in 2010. So, the Accountant General was requested not to process her pensionary claim. It appears, the Accountant General has informed of this communication to the Government and the Government by Ext.P5 communication, which was received by the Registrar on 10.05.2007, requested the Registrar to clarify whether the age of retirement of the employees of the High Court has been enhanced and whether approval for the same has been obtained from the Governor or not. The Registrar replied by Ext.P6 communication dated 22.05.2007, stating that the new Rules were brought into force with effect from 01.01.2007, in which the age

of superannuation of the employees is provided as 58. The Registrar also brought to the notice of the Government that this matter was informed to the Government by Ext.P2 communication dated 17.01.2007. Upon receipt of Ext.P6, the Government replied by Ext.P7 dated 12.06.2007, stating that the Government cannot accept the new Rule, as the same was not properly made. The approval of the Governor is necessary for making such a Rule. So, the High Court was requested by Ext.P7 to keep in abeyance the operation of the said Rule until the approval of the Governor as stipulated under Article 229(2) of the Constitution of India is obtained.

4. The petitioners challenge Ext.P7. They seek a declaration that Ext.P1 Rules are validly made under Article 229(2) of the Constitution. They seek a further declaration that they are entitled to continue in service till they attain the age of 58 years, by virtue of Rule 37(1) of Ext.P1 Rules and are entitled to draw salary and allowances till their retirement, on attaining the age of 58. They also seek a declaration that the 1st respondent Government are bound to respect Ext.P1 and issue necessary directions to the Accountant General, Thiruvananthapuram and the Sub Treasury Officer, Ernakulam to disburse the salary due to them. According to them, subject to any provisions made by the Legislature of the State, Hon. the Chief Justice is authorised to prescribe Rules, governing the conditions of service of the employees of the High Court. The approval of the Governor is necessary only for the Rules relating to salaries, allowances, leave or pensions. The petitioners submit that

the amendment to the Rule governing retirement age has nothing to do with the above four items, in relation to which the Rules made require approval of the Governor.

5. The High Court has filed a counter affidavit, supporting the stand of the petitioners. According to the High Court, the Chief Justice of the State has got primacy in the matter of framing the Rules governing service conditions of the employees of the High Court. The approval of the Governor is necessary, only for the Rules relating to salaries, allowances, leave or pensions. The retirement age is not covered by the above four items, it is submitted.

6. The Government have filed a counter affidavit, supporting the stand taken by it in Ext.P7. According to it, as per the constitutional scheme and also going by the interpretation of Article 229(2), made in various decisions rendered by the Apex Court, the approval of the Governor is necessary in matters requiring additional financial commitments. The enhancement of retirement age will definitely result in additional financial commitment and therefore, the approval of the Governor/Government is mandatory. So, the Rules now made are invalid, it is submitted.

7. The petitioners have filed a reply affidavit, dealing with the averments in the counter affidavit of the State. They would also point out that the enhancement of

retirement age will not result in any additional financial commitment.

8. I heard the learned counsel on both sides. I also heard the learned counsel appearing for the petitioners in the connected Writ Petitions. I had the benefit of hearing the learned counsel for the High Court Staff Association, which got itself impleaded in Writ Petition (C) No.20158/07. The said Association is opposing the prayers in the Writ Petition and supporting the stand of the Government.

9. I think, it is appropriate to extract the relevant constitutional/statutory provisions for conveniently referring to them. Article 229 of the Constitution of India reads as follows :

> "Officers and servants and the expenses of High Courts - (1) Appointments of Officers and servants of a High Court shall be made by the Chief Justice of the Court or such other Judge or officer of the court as he may direct :
>
> Provided that the Governor of the State may by rule require that in such cases as may be specified in the rule, no person not already attached to the court shall be appointed to any office connected with the court save after

consultation with the State Public Service Commission.

(2) Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the court authorised by the Chief Justice to make rules for the purpose :

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.

(3) The administrative expenses of a High Court, including all salaries, allowances and pensions payable to or in respect of the officers and servants of the court, shall be charged upon the Consolidated Fund of the State and any fees or other moneys taken by the court shall form part

of that Fund."

The High Court Service Rules 1970 were framed with the approval of the Governor. There was no specific provision in the said Rules, concerning the age of retirement. But, Rule 35 provided that the various service Rules in force in the State of Kerala applicable to the Officers under the Rule making control of the Governor or the Government of Kerala shall, subject to the High Court Service Rules, govern the members of the service in the matter of their pay, allowances, leave, leave salary, pension and other conditions of service. The said Rule 35 reads as follows :

> "Pay, allowances, leave salary, pension and other conditions of service - The Travancore Service Regulations, the Cochin Regulations, the Kerala Service Rules, the Government Servants Conduct Rules, the General Provident Fund (Kerala) Rules, the State Provident Fund Rules (Travancore), the Provident Fund Rules (Cochin), the Fundamental Rules, the Madras Leave Rules, Madras Pension Code, the General Provident Fund (Madras) Rules, the Madras Contributory Provident Fund Pension Insurance Rules, 1950 and the rules

regulating the pay of the services for the time being in force applicable to the officers under the rule making control of the Governor or Government of Kerala, as the case may be, shall, subject to these rules, govern the members of the service in the matter of their pay, allowances, leave, leave salary, pension and other conditions of service :

Provided that except with regard to salaries, allowances, leave and pension, the Chief Justice shall exercise the powers vested in the Governor or the Government under any of the aforesaid rules :

Provided further that the Chief Justice shall specifically issue orders sanctioning the grant of the scales of pay and allowances to the members of the service in accordance with those sanctioned by the Government."

By virtue of the above Rule, the provisions of the KSR were applicable. So, by

operation of Rule 60(a) Part I KSR, the age of retirement was 55 years. Rule 60(a) of Part I KSR reads as follows :

> "Except as otherwise provided in these rules, the date of compulsory retirement of an officer shall take effect from the afternoon of the last day of the month in which he attains the age of 55 years. He may be retained after this date only with the sanction of Government on public grounds which must be recorded in writing but he must not be retained after the age of 60 years except in very special circumstances."

When the new Rules were framed with effect from 01.01.2007, an express provision was included in it as Rule 37(1), which provided that the age of retirement shall be 58 years. Rule 37(1) reads as follows :

> "Pay, allowances, leave salary, pension and other conditions of service - (1) Except as otherwise provided in these Rules, the compulsory retirement on superannuation of a member of the Service shall take effect from the afternoon of the

> last day of the month in which he attains the age of 58 years."

10. In the light of the above constitutional and statutory provisions, the contentions of the parties have to be examined. The learned counsel for the petitioners submitted that the age of retirement is not a matter, covered by the four items specifically spelt out under Article 229(2) of the Constitution of India as matters requiring approval of the Governor for making Rules in relation to them. Relying the decision of the Apex Court in ***M.Gurumoorthy v. Accountant General, Assam and Nagaland*** **(**AIR 1971 SC 1850), it is submitted that if a Rule is made under Article 229(2), the Government cannot ignore it. If they are of the view that it is not properly made, they have to challenge the same by filing a Writ Petition before the High Court on the judicial side. Reference is made to para 4 of the said decision, which reads as follows :

> "Once an order had been passed by the Chief Justice of the High Court in exercise of his power under Art.229 of the Constitution, the only course open to the Government, if it wanted to challenge those orders, was to take appropriate proceedings either by way of persuading the

Chief Justice to rescind or amend his order on the administrative side or to file a Writ Petition challenging his orders in the High Court. But the Government took the extraordinary and somewhat unusual step of directing the Accountant General not to issue any pay slip to the appellant until final orders of the Government were issued."

They also relied on paragraph 8 of the said decision, which reads as follows :

"The unequivocal purpose and obvious intention of the framers of the Constitution in enacting Article 229 is that in the matter of appointments of officers and servants of a High Court, it is the Chief Justice or his nominee, who is to be the supreme authority and there can be no interference by the executive except to the limited extent that is provided in the Article. This is essentially to secure and maintain the independence of the High Courts. The anxiety of

the Constitution-makers to achieve that object is fully shown by putting the administrative expenses of a High Court including all salaries, allowances and pension payable to or in respect of officers and servants of the Court at the same level as the salaries and allowances of the Judges of the High Court nor can the amount of any expenditure so charged be varied even by the legislature. Clause (1) read with clause (2) of Article 220 confers exclusive power not only in the matter of appointments but also with regard to prescribing the conditions of service of officers and servants of a High Court by Rules on the Chief Justice of the Court. This is subject to any legislation by the State Legislature but only in respect of conditions of service. In the matter of appointments, even the legislature cannot abridge or modify the powers conferred on the Chief Justice under clause (1). The approval of the

> Governor, as noticed in the matter of Rules, is confined only to such rules as relate to salaries, allowances, leave or pension. All other rules in respect of conditions of service do not require his approval." (emphasis supplied)

They also point out that in all matters involving additional financial commitment, the approval of the Government is not necessary. They rely on the decision of the Hon. Supreme Court in ***State of U.P v. C.L.Agrawal*** (1997(5) SCC 1), in which it was held that for sanctioning additional increment, though involving additional financial commitment,the approval of the Governor is not necessary. They also point out that the State Legislature has not made any law, concerning the age of retirement of the employees of the High Court. Therefore, the decision of the Chief Justice will prevail even without the approval of the Governor. The learned Senior Counsel appearing for the High Court pointed out that the word "pensions" mentioned under Article 229 (2) has nothing to do with the age of retirement. In the KSR, the age of retirement is given in Part I. The Rules, governing pensions are contained in Part III. Special reference is made to Rules 1(a), 32 and 55 of Part III KSR by the learned Senior Counsel.

11. The learned Government Pleader submitted that as a result of the

enhancement of the retirement age from 55 to 58 years, the salaries and allowances will have to be paid to the employees concerned, which results in additional financial commitment. The learned counsel made submissions regarding the general principles underlying Article 229(2) by referring to the decisions of the Apex Court in ***C.G.Govindan v. State of Gujarat*** (1998(7) SCC 625), ***State of Maharashtra v. Association of Court Stenos, PA, PS*** (2002(2) SCC 141) and ***High Court Employees Welfare Association v. State of West Bengal*** (2007 AIR SCW 863). The learned Government Pleader relied on the following observations of the Apex Court in ***C.G.Govindan's*** case mentioned above :

> "Article 229 of the Constitution deals with the officers and servants and expenses of the High Court. Clause 2 of Article 229 provides that subject to any law made by the legislature, the conditions of service of officers and servants of the High Court shall be such as may be prescribed by rules made by the Chief Justice, provided that insofar as they relate to salaries, allowances, leave or pensions, they will require the approval of the Governor of the State. Therefore, the

power of the Chief Justice of a High Court on the administrative side to fix salaries of his staff is not absolute. Presumably, since this would require financial outlay and may have repercussions on the salaries of others, approval for the Governor is expressly required.

The Governor, therefore, has a constitutional right to examine the proposal of the Chief Justice relating to the salary of his staff and to either grant approval or withhold it. Power to grant approval implies the power to withhold it. Of course, the power must be exercised reasonably and in public interest. This constitutional methodology for fixing the salary of the High Court staff should not, ordinarily, be circumvented by the High Court by passing a judicial order which, in effect, directs the State to grant the salary scale desired by the High Court without the approval of the Governor. A

> mandamus of this kind should not be issued unless there is a breakdown of the constitutional machinery resulting in grave injustice or public detriment. There can be genuine differences in perception and honest differences of opinion between the Chief Justice and the Governor/State on the question of salaries, allowances or pension of the High Court staff. It is desirable that such issues are resolved administratively in a reasonable manner by both sides and the provisions of the Constitution in Article 229 are honoured."

The learned Government Pleader also relied on paragraph 25 of the decision of the Apex Court in ***High Court Employees Welfare Association's*** case (supra), which reads as follows :

> "The petitioner contended that the State Government's refusal is arbitrary. It is submitted that the Special Pay Commission has considered the matter in detail and made the

recommendations and that the Chief Justice who is the Authority to make the Rules relating to pay of High Court employees has approved all the recommendations of the Special Pay Commission. It is contended that the role of the State Government is limited to approving the rules made by the Chief Justice in so far as it relates to salaries and allowances; and there is no justification for the State to disagree with para 2 of Rule 4 made by the Chief Justice on the recommendation of the Special Pay Commission. Though the power to make rules in regard to pay and allowances of the High Court employees is vested in the Chief Justice subject to any law made by the Parliament, the Constitution has advisedly made the power of the Chief Justice to make such Rules conditional upon approval of such Rules by the Governor of the State, that is the State Government. The requirement of

approval under the proviso to Clause 2 of Article 229 is not a mere formality."

He also made special reference to the decision of the Apex Court in ***State of Andhra Pradesh v. T.Gopalakrishnan*** (AIR 1976 SC 123). The relevant portion of the said Judgment reads as follows :

"Leaving aside the proviso to clause (1) of Article 229 in the matter of appointments of officers and servants of a High Court, the power is of the Chief Justice or of such other Judge or officer of the Court as he may direct. Under clause (3), the administrative expenses of a High Court including all salaries,allowances and pensions payable to or in respect of the officers and servants of the Court are a charge upon the Consolidated Fund of the State. Any fees or monies taken by the Court formed part of that Fund. There is no separate fund or power to raise it at the disposal of the High Court for the purposes of meeting the salaries etc. of the High Court staff. In this

context, clause (2) of Article 229 may now be read with the proviso appended thereto.

'Subject to the provisions of any law made by the Legislature of the State, the conditions of service of officers and servants of a High Court shall be such as may be prescribed by rules made by the Chief Justice of the Court or by some other Judge or officer of the Court authorised by the Chief Justice to make rules for the purpose :

Provided that the rules made under this clause shall, so far as they relate to salaries, allowances, leave or pensions, require the approval of the Governor of the State.'

If there is a law made by the Legislature of the State, then subject to that law, otherwise without it, the Chief Justice or some other Judge or officer of the Court authorised by the Chief Justice is empowered to make rules laying down the conditions of service of the High Court staff. But

if the Rules made under clause (2) relate to salaries, allowances or pensions then, since in them is involved the question of finance, the framing of the rules under clause (2) requires the approval of the Governor - that means the State Government . One should expect in the fitness of things and in view of the spirit of Article 229 that ordinarily and generally, the approval should be accorded. But surely, it is wrong to say that the approval is a mere formality and in no case it is open to the Government to refuse to accord their approval. On the facts and in the circumstances of this case and in the background of the conditions which are prevalent in other States, Government could have been well-advised to accord approval to the suggestion of the Chief Justice, as the suggestion was nothing more than to equate the pay scales of the High Court staff with those of the equivalent posts in the

> Secretariat. That merely because the Government is not right in (not) accepting the Chief Justice's view and refusing to accord the approval is no ground for holding that by a writ of mandamus the Government may be directed to accord the approval."

The learned Government Pleader also made reference to the decision in ***Supreme Court Employees Welfare Association v. Union of India*** (1989(4) SCC 187). He pointed out that wherever additional financial commitments are necessary, the approval of the Governor is necessary. The learned counsel for the Kerala High Court Staff Association, which is opposing the prayers in the Writ Petition, adopted the contentions of the learned Government Pleader and submitted that the decisions relied on by the petitioners are not applicable to the facts of this case. He also relied on certain observations of this Court in an unreported Judgment, in which, the extension of service of a Registrar of this Court after his retirement from service on attaining the age of 55 years was challenged.

12. In answer, the learned counsel for the petitioners submitted that the Pay Commission has recommended for enhancing the retirement age to 58. The Commission has also opined that the same will not result in any additional financial

commitment. The Government have accepted the recommendations of the Commission in toto, though, it has not passed any consequential orders, modifying the retirement age of the Government servants. So, according to the petitioners, the plea of additional financial commitment is untenable. It is also pointed out that even if there is additional financial commitment, the approval of the Governor is necessary, only in relation to the four matters specifically mentioned in Article 229(2). They also rely on the definition of pension stated in ***D.S.Nakara v. Union of India*** (1983(1) SCC 305). Going by the concept of pension, the same has nothing to do with the retirement age, it is submitted.

13. It is common case that retirement age is a condition of service and therefore, the Chief Justice is competent to frame appropriate provisions, concerning the same. The parties differ only on the question whether such a Rule requires approval of the Governor or not. The learned counsel on both sides admitted that there is no decision of the Apex Court or this Court directly on this point. Going by the Constitutional scheme, the founding fathers thought that to ensure the independence of judiciary, the power to make Rules concerning service conditions of the Officers and servants of the High court should be left to the Chief Justice, subject to any law made by the State Legislature. Independence of Judiciary is one of the basic features of our Constitution. Various provisions are included in the Constitution to guarantee the independence of the Judiciary and to insulate it from the influence

of the Executive. Article 229(2) is one among them. But, the founding fathers have taken care to ensure that at least in relation to four main matters involving financial commitment, the approval of the Governor is necessary. This being not a matter to be discharged in the discretion of the Governor, the approval of the Governor means the approval of the Government, in the light of the Constitution Bench decision of the Apex Court in ***Samsher Singh v. State of Punjab*** (AIR 1974 SC 2192). But, in relation to other matters not covered by the four enumerated items, which may involve financial commitment, the approval of the Governor is not necessary. The interpretation sought to be advanced by the contesting respondents that in all matters involving financial commitment, approval of the Governor is necessary, cannot be accepted. But, in such matters also, the State Legislature has the power to say the ultimate word. It can frame a legislation dealing with the service conditions of the employees, including the age of retirement. In that event, the rule making power of the Chief Justice will be subject to the provisions of the Legislation. In other words, if the State Legislature passes a legislation providing that the age of retirement of the servants and employees of the High Court shall be 55, Rule 37(1), providing that the retirement age will be 58 years, will not have any efficacy.

14. So, the main point to be decided is whether the age of retirement is one coming under one or more of the aforementioned four items specified in the proviso to Article 229(2), namely, salaries, allowances, leave or pensions. In ***D.S.Nakara v.***

Union of India (1983(1) SCC 305), the Apex Court explains what is pension, in the following words :

> "Viewed in the light of the present day notions, pension is a term applied to periodic money payments to a person who retires at a certain age considered age of disability ; payments usually continue for the rest of the natural life of the recipient. The reasons underlying the grant of pension vary from country to country and from scheme to scheme. But, broadly stated, they are (1) as compensation to former members of the Armed Forces or their dependents for old age, disability or death (usually from service causes) (ii) as old age retirement or disability benefits for civilian employees and (iii) as social security payments for the aged, disabled or deceased citizens made in accordance with the rules governing social service programmes of the country. Pensions under the first head are of great antiquity. Under the second head, they have

been in force in one form or another in some countries for over a century but those coming under the third head are relatively of recent origin, though they are of the greatest magnitude. There are other views about pensions such as charity, paternalism, deferred pay, rewards for service rendered or as a means of promoting general welfare (see Encyclopaedia Britannica, Vol. 17, p.575). But, these views have become otiose.

Pensions to civil employees of the Government and the defence personnel as administered in India appear to be a compensation for service rendered in the past. However, as held in **Douge v. Board of Education** (302 US 74 L.Ed. 57), a pension is closely akin to wages in that it consists of payment provided by an employer, is paid in consideration of past service and serves the

> purpose of helping the recipient meet the expenses of living. This appears to be the nearest to our approach to pension with the added qualification that it should ordinarily ensure freedom from undeserved want."

In this context, it is apposite to refer to the relevant provisions of KSR. Part I KSR deals with pay, leave, joining time etc. Chapter VIII of Part I deals with compulsory retirement. Rule 60(a) deals with compulsory retirement on superannuation. Part II of the KSR deals with Travelling Allowances and Part III deals with Pension. Rule 1(a) of Part III says that pensions of all employees to whom these service Rules apply are regulated by the Rules in this Part. Rule 32 of the said Part deals with four classes of pension, namely, compensation pension, invalid pension, superannuation pension and retiring pension. The said rule reads as follows :

> "Pensions are divided into four classes, the rules for which are prescribed in this chapter :
>
> (a) Compensation Pensions
>
> (b) Invalid Pensions
>
> (c) Superannuation Pensions
>
> (d) Retiring Pensions."

Rule 55 deals with Pension on superannuation, which reads as follows :

> "A superannuation pension is granted to an officer entitled or compelled by rule to retire at a particular age."

By virtue of Article 229(2), any modification of the above Rules contained in Part III of KSR by the Chief Justice, will require the approval of the Governor. The provisions of KSR are incorporated in the High Court Service Rules by Rule 37(2). If the Hon. Chief Justice wants to have a different set of Rules governing pension, it can be framed only with the approval of the Governor. In this case, no modification is made to the above quoted Pension Rules as per the provisions of Ext.P1 Rules.

15. As mentioned earlier, I agree with the contention of the petitioners that in all matters involving financial commitment, unless they come under the four items specified in the proviso to Article 229(2), consent of the Governor is not required. For example, for granting increment or promotions under the Rules, consent of the Governor is not necessary. A proviso is an exception , cutting down or limiting the general sweep of the main provision. So, it has to be normally interpreted strictly in the sense that its effect should be confined to the matters specified therein. The words in the proviso, by implication, cannot add something to the main part of the provision. This legal position is well settled in view of the following judicial pronouncements :

Lush, J. in ***Mullins v. Treasurer of Survey*** (1880) 5 QBD 170) held as follows :

> "When one finds a proviso to a section, the natural presumption is that, but for the proviso, the enacting part of the section would have included the subject-matter of the proviso."

Lord Macmillan in the Privy Council decision in ***Madras & Southern Maharatta Rly. Co.Ltd. v. Bezwada Municipality*** (AIR 1944 PC 71) held as follows :

> "The proper function of a proviso is to except and to deal with a case which would otherwise fall within the general language of the main enactment and its effect is confined to that case."

Our Apex Court, in ***Shah Bhojraj Kuverji Oil Mills and Ginning Factory v. Subhash Chandra Yograj Sinha*** (AIR 1961 SC 1596) held as follows :

> "As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment and ordinarily, a proviso is not interpreted as stating a general rule."

Lord Watson in ***West Derby Union v. Metropolitan Life Assurance Co***. (1897) AC 647) held as follows :

> "If the language of the enacting part of the statute does not contain the provisions which are

> said to occur in it, you cannot derive these provisions by implication from a proviso."

In ***Madras & Southern Maharatta Rly. Co.Ltd. v. Bezwada Municipality*** (supra), Lord Macmillan held as follows :

> "It leaves the generality of the substantive enactment in the sub-section unqualified except insofar as it concerns the particular subject to which the proviso relates. Where, as in the present case, the language of the main enactment is clear and unambiguous, a proviso can have no repercussion on the interpretation of the main enactment so as to exclude from it by implication what clearly falls within its express terms."

Going by the above principles, I feel there is no reason to consider that the age of retirement of employees will come under the matters relating to pension as contemplated under the proviso to Article 229(2). If the retirement age does not come under the sweep of the word 'pensions', then, it can be in no way be correlated to the other three items under the proviso to Article 229(2). "Salaries" and "allowances" of the employees of the High Court are governed by the orders issued by the Chief Justice with the approval of the Government. Rule 37(1) does not

impinge upon them. Same is the case of Leave rules which are those contained in Chapter IX of Part I KSR. The contention of the contesting respondents that in view of the proviso to Article 229(2), in all matters involving financial commitment, approval of the Governor is necessary, is plainly untenable. The words of the proviso cannot be interpreted to restrict the meaning of the main part of Article 229, which authorises Hon. the Chief Justice to frame Rules concerning service conditions, including retirement age. So, it is unnecessary to decide the disputed question whether the enhancement of retirement age is a matter involving additional financial commitment. In view of the above legal position, I am of the view that the rule concerning retirement age has been validly made by Hon. the Chief Justice. The Government are bound to respect it.

16. In the result, the petitioners are entitled to succeed. The Writ Petition is allowed. Ext.P7 is quashed. Respondents 1 and 2 are bound by the new Rule regarding age of retirement, framed by Hon. the Chief Justice as the same is a validly made Rule . Respondents 1 and 2 are directed to issue directions to respondents 5 and 6 to honour the salary bills of the petitioners, preferably before Onam holidays or at any rate, within one month from the date of production of a copy of this Judgment. No costs.

<u>WPC NOS. 20158, 20191, 20856 & 21291 OF 2007</u>

17. In view of the judgment in Writ Petition (C) No.19628/07, these Writ

Petitions are also allowed. The directions issued in that Judgment will be treated as the directions in these cases also.

13.08.2007 **K.BALAKRISHNAN NAIR,JUDGE**

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